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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,392	12/07/2000	Richard Alan Haase	0170SS-45347	7432

7590

10/18/2005

Richard A. Haase  
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EXAMINER

BARRY, CHESTER T

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

15

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/733,392 <i>q 9d/005710</i>	<b>Applicant(s)</b> HAASE, RICHARD ALAN	
	<b>Examiner</b> Chester T. Barry	<b>Art Unit</b> 1724	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☒ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Please see attachment. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☒ Newly proposed or amended claim(s) 1-8, 10-15, 19, 33-35, 37, 38, 40, 41, 45-48, 52-55, 59-61, 67, 69-71 and 73 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: please see attachment.  
 Claim(s) objected to: 71.  
 Claim(s) rejected: 2, 3, 15, 16, 26, 29-32, 36, 44, 51, 58, 68 and 72.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
 13. ☒ Other: Notice of References Cited (PTO-892) (attached).

Chester T. Barry  
 571-272-1152 direct  
 Art Unit: 1724

*He*

3. (a). The new issues requiring further search and/or consideration raised in the Proposed After-Final Amendment filed on 9/10/05 are:

- i. Whether claim 22, broadened by deletion of the word "cationic" from the expression "cationic polyacrylamide" recited in claim 22 at the time of final rejection, is patentable. The new issues raised by this change are novelty (Sec. 102), obviousness (Sec. 103), and obviousness-type double patenting.
- ii. Whether "quaternized polyacrylamide" is a "polymeric quaternary ammonium compound" (see claims 26, 30, 36, 44, 51, 58, and 68). Further consideration would include a review of the entire specification for support (including abstract, col 6 line 44 – col 7 line 20 and col 8 lines 24-51), a comparison of the phraseology of these claims with that of claims 1, 8, 15, and 22, for example, and a prior art search for any recognition in the art that "quaternized polyacrylamide" is a recognized specie within the genus of "polymeric quaternary ammonium compounds." In this regard, at least USP 5,415,782 (col 3 lines 40 – 42) would be considered. The issue raised, therefore, is the definiteness of the metes and bounds of the claims (Sec. 112, second paragraph).
- iii. Whether "ammine" is an acceptable alternative spelling of "amine" in claims 26, 30, 36, 44, 51, 58, and 68. The new issue raised is a possible objection to these claims under 37 CFR 1.75.

3. (b). Proposed claim 16 raises the issue of new matter. The new matter issue is whether there is 35 U.S.C. Sec. 112, first paragraph, support for adding polyacrylamide in "emulsion form." Column 7 lines 34 – 37 of the patent at issue, i.e., USP 5,846,435, appears to support addition of polyacrylamide in solution or dry form, but not in emulsion form. Compare also the continuation-in-part, USP 5,906,750 at column 9 line 10, of the '435 patent for support for addition of polyacrylamide in emulsion form as well as solution and dry form. The "addition of polyacrylamide emulsion" appears to be subject matter that was added to the CIP after the patent application at issue (now '435) was filed.

7. Claim(s) Patentable or confirmed: 1, 4-8, 10-14, 19, 22, 24, 25, 27, 28, 33-35, 37, 38, 40, 41, 45-48, 52-55, 59-61, 67, 69-70, 73

Furthermore, although not forming a basis for this refusal of entry of the 9/10/05 paper, it is noted that the claim status identifiers reciting "previously," i.e., the status identifiers for claims 1, 4, 5 – 8, 10, 12, 13, 33, 41, 48, 55, 67, 72 – 73, do not appear to comply with 37 CFR 1.530(d)(2). In any future after final paper, or filing with an RCE,

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"previously" should be deleted from the status identifiers. 37 CFR 1.530(d)(2) requires that the parenthetical status identifiers be (amended), (twice amended), etc.

Chester T. Barry

A handwritten signature in black ink, appearing to read "Chester T. Barry", with a stylized flourish extending from the end.

Primary Examiner  
U.S. PTO - Group Art Unit 1724  
571-272-1152